

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>HOWARD OMAR POWELL,</b>	:	CIVIL NO. 1:15-CV-1938
	:	
Petitioner	:	(Chief Judge Conner)
	:	
v.	:	
	:	
<b>COMMONWEALTH OF PA,</b>	:	
<b>PA ATTORNEY GENERAL,</b>	:	
	:	
Respondents	:	

**ORDER**

AND NOW, this 17th day of November, 2015, upon consideration of the petition for writ of habeas corpus (Doc. 1) filed by petitioner Howard Omar Powell, challenging his 2002 Court of Common Pleas of Schuylkill County conviction of attempted first degree murder and related offenses, Commonwealth v. Powell, 806 A.2d 464 (Pa. Super. 2002), and it appearing that the court previously dismissed Powell's first § 2254 petition as untimely, Powell v. Tennis, et al., No. 1:06-CV-57, 2006 WL 1722390 (M.D. Pa. June 20, 2006), and that petitioner's request for a certificate of appealability in that matter was denied by the United States Court of Appeals for the Third Circuit, Powell v. Tennis, et al., No. 06-3623 (3d Cir. 2007), and it further appearing that this filing constitutes a second or successive petition for writ of habeas corpus subject to the Antiterrorism and Effective Death Penalty Act ("AEDPA"), Pub.L. No. 104-132, 110 Stat. 1214 (Apr. 24, 1996), which specifically provides that "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of

appeals for an order authorizing the district court to consider the application,” 28 U.S.C. § 2244(b)(3)(A), see Scott v. Klem, No. 4:CV-05-1337, 2005 WL 1653165, \*2 (M.D. Pa. July 12, 2005) (citing 18 U.S.C. § 2244(b)); Wilson v. York Cnty. Common Pleas Ct., 2005 WL 1229719, at \*3 (M.D. Pa. May 24, 2005) (citing Robinson v. Johnson, 313 F.3d 128, 139 (3d Cir. 2002)) (recognizing that “[t]he Third Circuit clearly held that, absent an order from the circuit court granting leave to a petitioner, a district court does not have subject matter jurisdiction to entertain any petition for writ of habeas corpus that it deems to be a second or successive petition”); Stokes v. Gehr, 399 Fed. App’x 697, 700 n. 2 (3d Cir. 2010) (a motion under § 2254 would be “second or successive” when the petitioner’s first such petition is dismissed as untimely), and it being evident that petitioner has failed to comply with Section 2244(b)(3)(A), it is hereby ORDERED that the petition is DISMISSED without prejudice to petitioner to seek approval from the court of appeals pursuant to 28 U.S.C. § 2244(b)(3)(A) to file a second or successive habeas petition.

/S/ CHRISTOPHER C. CONNER  
Christopher C. Conner, Chief Judge  
United States District Court  
Middle District of Pennsylvania